IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4290 of 2006()

CRA.472/2005 of II ADDL. SESSIONS COURT, PALAKKAD
ST.2479/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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REVN. PETITIONER/APPELLANT/ACCUSED

BALASUBRAMANIAN, AGED 55 YEARS,
S/O.KRISHNAN NAIR, PRASANTHI,
NEAR FANTASY PARK, MALAMPUZHA, PALAKKAD.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT

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1. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. RADHAKRISHNAN,
   S/O.APPU MOOTHAN, 29/243, TEMPLE STREET,
   KARNAKINAGAR, VADAKKANTHARA P.O.,
   VADAKKANTHARA, PALAKKAD.

   BY PUBLIC PROSECUTOR ADV. SHRI KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL. R.P.No. 4290 OF 2006

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Dated this the 5th December , 2006

O R D E R

The petitioner who is the accused in S.T.No. 2479 of 2004 on the file of the court of the Judicial Magistrate of the First Class-III, Palakkad was found guilty for the offence under section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for a period of one month and to pay compensation of Rs. 60,000/- under section 357(3) of the Code of Criminal Procedure. The petitioner challenged the conviction and sentence in Crl. Appeal No. 472 of 2005 on the file of the court of the II Addl. Sessions Judge, Palakkad. The appellate court confirmed the conviction and sentence .

2. The case of the complainant is that the accused borrowed a sum of Rs. 60,000/- from him in August, 2003. In discharge of that liability, the accused issued Ext. P1 cheque to the complainant . The cheque was dishonoured on its presentation. Ext.P4 notice was issued, to which the petitioner sent Ext.P7 reply notice. Before the trial court, the complainant was examined as P.W.1 and Exts. P1 to P7 were marked. D.W.1 was examined on behalf of the accused and Exts. D1 and D2 were marked on

his side. The case put forward in defence is that the complaint was filed at the behest of Masilamani, who was examined as D.W.1. The accused contended that he had no dealings with the complainant. The wife of the accused has borrowed a sum of Rs. 25,000/- from D.W.1 and two blank cheques were given by the accused as security in that transaction. It is contended that one of the cheques given to D.W.1 has been misused, in filing the present complaint. D.W.1 was examined to prove that he had transaction with the wife of the accused and that two blank cheques were issued by the accused at the time of that transaction. D.W.1 did not support the defence version. D.W.1 stated that he has filed a suit against the wife of the accused. The evidence of D.W.1 is not helpful to the accused at all. To show that the defence is probable, the accused has not adduced any evidence and no other materials are produced before the court to show that the case put forward by the accused is true. The signature in Ext.P1 cheque is admitted. The cross examination of P.W.1 also would not probabilise the case put forward by the defence.

3. The trial court found that Ext. P1 cheque was issued by the

accused in discharge of his liability towards the complainant and that the accused has not discharged the burden of proof cast on him. The presumption under section 139 of the Negotiable Instruments Act was drawn against the accused and it was held that the accused failed to rebut the presumption . The appellate court has also considered the documentary and oral evidence and also the decisions reported in **ILR 2006 (3) Kerala 665** (**Bhaskaran Nair C. vs. Abdul Karim and another**) and **ILR 2006(3) Kerala 604** (**Mulammoottil Consumer Credit Ltd. vs. E.R. Sreenivasan and another)**. It was held by the appellate court relying on these decisions that in the facts and circumstances of the case, the burden rests heavily on the accused to show that he had issued the blank cheques and that the mere suggestion that in the cross examination of the complainant that blank cheques were issued by the accused is not enough to rebut the presumption under section 139 of the Negotiable Instruments Act. The appellate court also noticed that the wife of the accused who had transaction with D.W.1 was not examined.

4. On going through the judgments of the courts below , I do not find any illegality, impropriety or irregularity warranting interference under

section 397 of the Code of Criminal Procedure. The finding that the accused/petitioner is guilty of the offence under section 138 of the Negotiable Instruments Act is legal and proper.

4. As regards the sentence, I am of the view that it can be reduced to imprisonment till the rising of the court in the light of the decision reported in **Anilkumar vs. Shammy (2002 (3) KLT 852).** Since conviction is not being interfered with, I do not think it is necessary to issue notice to the second respondent/ complainant.

In the result, the Crl. Revision Petition is allowed in part, in the following manner.

i) The conviction under section 138 of the Negotiable Instruments Act is confirmed.

ii) The sentence of imprisonment is modified and reduced to imprisonment till the rising of the court.

iii) The direction to pay compensation of Rs.60,000/- and in default of payment of compensation, to undergo simple imprisonment for a period of two months is also confirmed.

However, three months' time is granted to the petitioner to pay compensation. The default sentence shall be kept in abeyance for a period of three months.

K.T. SANKARAN,
JUDGE.

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